

DATE: April 9, 1998

SUBJECT: PRECEDENTIAL/NONPRECEDENTIAL OPINIONS AND ORDERS

1. The current workload of the appellate courts precludes preparation of precedential opinions in all cases. Unnecessary precedential dispositions, with concomitant full opinions, only impede the rendering of decisions and the preparation of precedential opinions in cases which merit that effort.

2. The purpose of a precedential disposition is to inform the bar and interested persons other than the parties. The parties can be sufficiently informed of the court's reasoning in a nonprecedential opinion.

3. Disposition by nonprecedential opinion or order does not mean the case is considered unimportant, but only that a precedential opinion would not add significantly to the body of law or would otherwise fail to meet a criterion in paragraph 4. Nonprecedential dispositions should not unnecessarily state the facts nor tell the parties what they argued, or what they otherwise already know. It is sufficient to tell the losing party why its arguments were not persuasive. Nonprecedential opinions are supplied to the parties and made available to the public. The results reached in cases disposed of by nonprecedential opinions or Rule 36 judgments are reported periodically in tables in West Federal Reporter.

4. The court's policy is to limit precedent to dispositions meeting one or more of these criteria:

- (a) The case is a test case.
- (b) An issue of first impression is treated.

- (c) A new rule of law is established.
- (d) An existing rule of law is criticized, clarified, altered, or modified.
- (e) An existing rule of law is applied to facts significantly different from those to which that rule has previously been applied.
- (f) An actual or apparent conflict in or with past holdings of this court or other courts is created, resolved, or continued.
- (g) A legal issue of substantial public interest, which the court has not sufficiently treated recently, is resolved.
- (h) A significantly new factual situation, likely to be of interest to a wide spectrum of persons other than the parties to a case, is set forth.
- (i) A new interpretation of a Supreme Court decision, or of a statute, is set forth.
- (j) A new constitutional or statutory issue is treated.
- (k) A previously overlooked rule of law is treated.
- (l) Procedural errors, or errors in the conduct of the judicial process, are corrected, whether by remand with instructions or otherwise.
- (m) The case has been returned by the U.S. Supreme Court for disposition by action of this court other than ministerial obedience to directions of the Court.
- (n) A panel desires to adopt as precedent in this court an opinion of a lower tribunal, in whole or in part.

5. The election to employ a nonprecedential opinion or a Rule 36 judgment shall be unanimous among the judges of the panel. Nothing herein shall impede the right of any judge to

require disposition to be precedential in any case before a panel opinion has been issued, even in a case previously designated nonprecedential. In that event the judge to whom the authoring role is assigned shall supply an appropriate majority opinion.

6. A request of a panel member or a motion seeking reissuance of an issued opinion or order as a precedential disposition shall only be granted by a unanimous vote of the judges on the merits or motions panel that decided the case or matter. If such request or motion be granted, the author of the opinion shall revise it appropriately.

7. Nothing herein shall be interpreted as impeding the right of any judge to write a separate opinion.